

Respondent argues there is no medical evidence establishing claimant's right wrist problem is related to her left wrist injury and therefore the ALJ's Order should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

Susan Clark worked as a team lead for respondent's collection agency. Her job duties included supervising 15 collectors, training, reviewing their collections, time cards and computer work. On May 30, 2006, claimant was injured when she tripped over a floor mat and fell landing on her hands and knees.

Claimant was provided treatment at Olathe Occupational Medicine for her complaints of pain in her lower back and left wrist. An x-ray of claimant's left wrist did not reveal any fractures. The doctor prescribed anti-inflammatory medication and recommended physical therapy two or three times a week for her left wrist. After two months of physical therapy, claimant was referred to Dr. Brian J. Divelbiss.

In August 2006 claimant was examined and evaluated by Dr. Divelbiss. The doctor gave claimant a cortisone injection into the wrist. On September 20, 2006, Dr. Divelbiss released the claimant from his care. Claimant was off work for six weeks between August and the middle of October 2006.

But claimant testified she was still having pain in her left hand at the time she was released from Dr. Divelbiss. The claimant's left hand pain worsened and she returned to Dr. Divelbiss on November 30, 2006. The doctor recommended another cortisone injection or surgery and the claimant opted for surgery. Dr. Divelbiss performed a surgical DeQuervain's release on claimant's left wrist on January 5, 2007.

The claimant testified that the problems with her right wrist began about the time she saw Dr. Divelbiss in late November 2006. On December 13, 2006 claimant sought treatment with her primary care physician, Dr. Gernon. Claimant complained of numbness and tingling in her right hand and right foot. Dr. Gernon recommended claimant see a neurologist for the numbness in her right hand and fingers.

In a letter dated February 1, 2007, Dr. Divelbiss noted that claimant's work activities were a significant contributing factor for the numbness and tingling in her right hand. But after a follow-up meeting with the claimant during which the onset of symptoms in her right hand were discussed, Dr. Divelbiss concluded that he could not state within a reasonable degree of medical certainty that the right-side symptoms were related to the left-wrist treatment or her job activities. It should be noted that claimant told Dr. Divelbiss that her right wrist, shoulder and neck pain did not start immediately after her fall.

On April 19, 2007, claimant was examined and evaluated by Dr. John A. Pazell at the request of claimant's attorney. Claimant provided Dr. Pazell with a history of trauma to her left wrist, right wrist, low back and shoulder from a fall at work. Claimant was

complaining of neck, shoulder and right wrist pain as well as numbness in the right, middle and ring fingers. Dr. Pazell diagnosed claimant as having carpal tunnel syndrome on the right. The doctor recommended an x-ray and MRI of the cervical spine, an EMG of the upper extremities, and an MRI of the shoulder.

Although claimant is right hand dominant she testified she had to use her right hand more after the injury to her left wrist. She further testified she is having problems with swelling in her lower arm and wrist as well as pain that travels to her shoulders and neck.

It is claimant's position that she had to overcompensate by using her right hand more while she recovered from the injury to her left wrist and consequently her right wrist complaints are a natural and probable consequence of her fall at work.

When a primary injury under the Workers Compensation Act is shown to arise out of and in the course of employment, every natural consequence that flows from that injury, including a new and distinct injury, is compensable if it is a direct and natural result of the primary injury.¹ And when there is uncontradicted expert medical testimony which links the second injury to the primary injury, the second injury is compensable as a natural and probable consequence of the primary injury.²

The difficulty with claimant's position is that there is an absence of medical testimony linking her later onset of right wrist symptoms to the primary injury. Claimant agrees that her work activities are not repetitive and did not cause her right wrist symptoms. Dr. Pazell attributed claimant's current complaints to the primary injury based upon an incorrect history that such complaints were contemporaneous with her fall, as the doctor was apparently not provided the accurate history of an onset of pain approximately six months after the primary injury. Although Dr. Divelbiss initially attributed claimant's right wrist complaints to the primary injury, he then specifically discussed the later onset of symptoms with the claimant at an office visit on February 15, 2007. The office notes from that visit provide in pertinent part:

She [claimant] requests that we take a look at the pain she is having on the right wrist, shoulder, and neck. Patient reports the pain did not start immediately following the fall. She believes the pain is related [sic] to her having to compensate by not using the left UE.

PLAN:

1. Discussed that we are not able to guarantee that her symptoms on the right UE are related to the left wrist diagnosis and treatment given the fact that she is right

¹ *Jackson v. Stevens Well Service*, 208 Kan. 637, 493 P.2d 264 (1972).

² *Casco v. Armour Swift-Eckrich*, 283 Kan. 508, 154 P.3d 494 (2007).

handed and her job description as previously provided to me does not indicate excessive repetitive activities.³

Although the second injury does not have to be caused by work activities as intimated in the ALJ's Order, nonetheless, there must be a causal link between the second injury and the primary injury. And Dr. Divelbiss's office note indicates that he did not consider overcompensation due to treatment from the primary injury to have caused the right upper extremity complaints. Based upon the record compiled to date, this Board member finds that claimant has not met her burden of proof to establish that her current right upper extremity complaints are a natural and probable consequence of her primary injury.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.⁴ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2006 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.⁵

WHEREFORE, it is the finding of this Board Member that the Order of Administrative Law Judge Robert H. Foerschler dated September 13, 2007, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of November 2007.

BOARD MEMBER

c: Michael J. Joshi, Attorney for Claimant
Matthew J. Hempy, Attorney for Respondent and its Insurance Carrier
Robert H. Foerschler, Administrative Law Judge

³ P.H. Trans., Joint Ex. 5 at 2.

⁴ K.S.A. 44-534a.

⁵ K.S.A. 2006 Supp. 44-555c(k).